

## **NSROC PLANNING PRIORITIES: NSW PLANNING REVIEW – Response to Issues Paper**

### **EXECUTIVE SUMMARY**

This document describes the Northern Sydney Regional Organisation of Councils' (NSROC) key proposals for NSW Planning reform. It consolidates various NSROC submissions, policy statements and concerns relating to planning. It focuses on key strategic issues in the planning regime. It follows an initial submission made in November 2011 on scope of the Review and content of the proposed Issues Paper

This submission reiterates some of the issues in the NSROC submission of November 2011 plus some additional commentary.

### **Specific comments and responses**

This submission focuses on two areas of the paper: Chapter A- Introduction and Chapter F- Implementation. Given time constraints NSROC and its member councils will examine the responses to the other sections and make substantial comments at the Green Paper stage of the review process later in 2012.

### **Chapter A - Introduction**

#### **1.1 and 1.2 Objectives and flexibility**

The NSW development sector is a dynamic and evolving industry. For 30 years the NSW Planning Act 1979 has tried to keep pace with the industry through a myriad of changes and additions which has now compromised the integrity of the whole. There are regular exposures of competing and conflicting elements in the legislation resulting in a plethora of amendments, guidance notes and other materials. The lack of coherence in the planning regime's principle legislation has undermined public confidence in the planning system. The dangers of such a complex system are increased risks of interpretation errors, litigation and poor decision making. The costs to community, developers, building professionals and councils to navigate through such a complex system are rising without any correlating public benefit

The primary purpose of a regulated planning system is to protect and enhance the public benefits of the physical environment in which we live. It should focus on delivering improved community amenity in all spheres - economic, social, and environmental - using legislative means that are transparent, participatory and efficient. Government structures, planning processes and legislative instruments should assist to this aim.

NSROC believes that the matters covered by the current objectives of the EPA Act are still relevant and could be retained but with a shift in focus to be more proactive and to include an explicit reference to promotion of good strategic planning at all levels of government. Furthermore, while it is recognised that planning laws do not remain static, future amendments should not undermine the integrity of the original planning principles.

Planning is not a unique activity to NSW or Australia yet discussion about comparative “best practice planning” is rare in the NSW planning debate. NSROC Councils recommend that this review be placed in its broadest context:

- It must consider other approaches across Australia and internationally;
- It must consider the balance of planning with other functions of government and planning functions between levels of government; and
- It must undertake best practice analysis which examines qualitative outcomes along with efficiency of systems and processes.

At a delivery level, the NSW planning system must aim to:

- be affordable and efficient for participants to navigate;
- capture strategic issues and recognise paradigm shifts in population demographics, active living requirements and climate change;
- align the scale of development with the scale of delegated decision making;
- capitalise on technology with robust electronic systems for mapping, development processing and participation; and
- be resourced adequately and strike a balance between deliberation and dispute mechanisms and finality of outcomes.

A key discipline that should overlay an effective planning system is an understanding of the capacity of a planning system to drive or stymie economic and social development. In this review of the planning system, it is valuable to consider the opportunity costs of poor systems or under-resourced processes.

***A failed planning system is one where the opportunity costs of planning become greater than the benefits that it was designed to provide.*** For example a process whereby a Local Environment Plan takes a decade to develop and is thereby 10 years out of date on the day of commencement is indicative of a failed system, irrespective of the particular issues and roles undertaken by various parties.

Planning is not an exact science nor capable to foresee every contingency so the system should have flexibility. However a variation process must still apply transparency principles for decision making that are common to the whole planning system.

### **1.3 Strategic Planning**

The major strategic planning objectives of State government are reflected in strategic documents which outline state, regional and local priorities. NSW has long established a hierarchy of plans that reflect these levels of interest – the State Plan and relevant regional and metropolitan plans. These documents are then supported by infrastructure delivery plans, transport strategies and other complementary plans. As noted by the Planning Institute of NSW:

The planning system involves the interplay of legitimate State, regional and local interests and plans and accompanying administrative and financial structures should reflect this.

Strategic planning (policy setting) based on an integrated 3 tiered framework of State, regional and local interests is fundamental to decision making on development projects at all levels.

This hierarchy should include the State Plan (endorsed by Parliament and incorporating any relevant National Policies), Regional Planning Strategies (approved by State Cabinet), and Local Plans (approved by Councils). Each plan should be vertically integrated and consistent and provide for delegation of powers. The Local Plan would incorporate the policies and strategies from the State and Regional Plans and would be the single instrument that land owners refer to for all controls applying to land (similar to the Victorian model). All levels of plan making (State, Regional and Local) should follow a similar series of steps<sup>1</sup>.

What is absent is the binding nature and enforceability of these plans. The reality of the current NSW strategic planning hierarchy is that it is only binding on local government. NSROC member councils have strongly objected to the imposition of binding population and housing targets in current sub-regional metropolitan plans without the complementary enforcement of state related obligations (ie state transport infrastructure), within those plans. This is not simply an issue of principle but it has compromised the objectives of the plans themselves so that development is managed sub-optimally.

A further issue is the lack of transparency and consultation in the development of state and regional strategic planning. The critical problem with the former NSW Government's metropolitan strategy and sub-regional plans was its failure to explain to communities how their growth targets have been calculated. This left councils in an unenviable position of being neither able to defend or challenge these targets for their communities.

Also councils are required to undertake extensive community consultation through statutory Community Strategic Planning requirements imposed by the Division of Local Government. This information is a key resource for regional and local planning which the State government should reference in determining planning priorities. This lack of transparency and consultation only served to compromise the councils' and the State government's capacity to deliver on strategic planning and retain community confidence. Community Strategic Plans also require councils to map out detailed plans over a 10 year period. Similarly regional and other State strategic plans should be matched to these timeframes.

A key weakness in the NSW planning system is undefined roles and responsibilities between levels of government. The Commonwealth Government has articulated a role in city planning with its COAG Capital Cities Strategic Planning initiative and its recent examination of standard criteria for capital city strategic planning. This activity clearly

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<sup>1</sup> Planning Institute of Australia, NSW Division, A new Planning Act for NSW, August 2010

implies that the Commonwealth sees a role in planning systems for the majority of the Australian living in cities<sup>2</sup>.

The ramifications of this process for the review of the NSW planning system must be recognised. Excluding some specific infrastructure jurisdictions (eg airports), the Commonwealth's planning responsibilities are not prescribed. However there is no doubt given the resourcing of core, large scale infrastructure (eg metropolitan rail projects), the Commonwealth has a substantial and significant role.

The NSW planning system must have a rigour that allows the State to gain the confidence of the Commonwealth and the private sector to invest in essential infrastructure. The NSW Planning system must contain a framework that allows for the integration of Federal planning objectives. This can be achieved by incorporating Federal Planning initiatives through a State Plan cascading to Regional Strategies. This approach would need to be supported by a binding agreement between the NSW Government and the Federal Government through COAG that would provide for the mutual governmental recognition of planning policies

As noted previously there is a lack of enforcement imposed on State government in metropolitan documents. NSROC also identified the absence of reporting and auditing of previous plans against objectives or targets. Without this reflection, an analysis of performance and effectiveness of planning instruments is limited.

The current Metropolitan Plan assumes a fixed population growth for Sydney and fails to look at the current population movements and employment flows between the Sydney Basin and adjacent regions such as Central Coast, Wollongong and Newcastle. NSROC's view is that planning for Sydney is being made in isolation and in absence of transport and economic strategies that could encourage population growth outside the Sydney region.

The failure of land use planning and transport infrastructure coordination has been a particular concern to NSROC councils. The new State government is introducing an integrated planning and transport governance system through departmental restructuring and the creation of new agency "Transport for NSW" which is a substantial improvement on former structures.

However NSROC's view is that land use planning and transport should be further aligned and integrated into a single conglomerate agency. The current arrangement excludes the Department of Planning. NSROC sees that strategic planning must be a priority function from which transport and infrastructure decisions follow. The current arrangement leaves the Department of Planning as a derivative agency and hence strategic planning is not given the leading role to drive change.

A feature in the new "Transport for NSW" is a unit specifically dedicated to transport interchange management. NSROC supports this unit having consistently argued that special attention is required for sites adjacent to transport infrastructure. Effective master-planning with local government is required for each site to reflect specific

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<sup>2</sup> The COAG Final report on consistency of planning systems with national criteria, including work on continuous improvement and best-practice references is due on February 2012.

attributes of the surrounding community. Consideration must be given to topography, commuter parking, and adjacent services such as retail, health or education facilities etc. Transport infrastructure planning must capture both local needs and wider integrated network concerns.

Because of these issues NSROC councils seek reconsideration of the former State Government's policy to delineate arbitrary distances from centres or transport nodes and mandate density within the proscribed area. Such one-size-fits-all approaches do not provide for considered outcomes nor do they recognise the heterogeneity of built form, existing infrastructure and topography in Sydney.

#### **1.4 Community participation**

Community participation is important and the planning system should ensure consistency in participation opportunities in development decisions no matter what determination authority considers them. This is not the case in NSW and is illustrated in the sale of public lands, particularly State Government land.

NSROC Councils have raised the concerns about the shrinkage of public open space as urban density increases, and also the adequacy of land supplies for future demands such as aged care facilities. Under-utilised State land is one source of land to possibly address these needs.

Community discussion and debate about the sale of State owned land has been stymied under the current planning regime. Under the standard LEP, state owned land now generally defaults to adjacent land zoning without any rezoning process. The disposal process is at the Government's discretion and there is no obligation for state "owner" agencies to consult with relevant council about the community's strategic land needs. Councils argue that State land disposal should have the same process of public scrutiny and consultation that is required for disposal of Council owned land.

A new planning regime should include a more transparent and open process for the sale of state owned land and consistency in the application of community participation opportunities. The form of planning mechanisms that could be used may include:

- a) returning to some type of special use zoning and/or reintroduction of some type of re-zoning assessment process, or
- b) revising the internal State Government's land disposal review process (GAMC<sup>3</sup>) to be more open to public engagement, or
- c) other options used by other jurisdictions or a combination of the mechanisms above.

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<sup>3</sup> GAMC is the Government Asset Management Committee, chaired by NSW Treasury, which assesses the sale of government assets. It is an internal evaluation process that considers alternative State government needs for the land. There are currently no requirements for public or council consultation in this process. See [link to GAMC - www.dpc.nsw.gov.au/publications/memos\\_and\\_circulars/ministerial\\_memoranda/2003/m2003-03](http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2003/m2003-03)

## **1.5 Community infrastructure and facilities**

NSROC is very concerned about future funding of community facilities. This extends not only to obvious infrastructure such as the maintenance of roads, community facilities but also open space in population growth areas. The lack of open space has major effects on community health and wellbeing which, if not addressed, generate other costs to the State and Federal government through issues such as high rates of obesity and other health conditions related to inactivity and isolation.

NSROC region has high land values so the capacity for councils to acquire land for open space purposes is highly expensive. In NSW the Sydney Region Development Fund was dedicated to this purpose and over time councils have contributed millions of dollars towards this fund yet little additional regional open space has been provided to serve the northern region of Sydney.

As all cities grow and density increases, a targeted program to assist with open space acquisition using council, state and federal monies is required. This should initially be focused on acquiring additional open space for active recreation purposes.

## **1.6 Development Decision Making**

A key issue in development decision making is consistency in process. There are substantial inconsistencies between councils and state government development decision making which is undermining the planning system, such as the processes for the sale of State public land as noted above, but also through the operation of State planning authorities.

State planning authorities are a further instrument of strategic planning, alongside regional and metropolitan plans. In NSW there is a frequent disconnect between planning, financing and delivery of major development projects. NSROC believes that there is a role for development authorities to bridge this gap in some instances. However a critical factor is the structure of such authorities and their accountabilities to the public, the local council and the directly affected community.

For example in 2010 the previous NSW Government created the Sydney Metropolitan Development Authority. NSROC has identified the following deficiencies in this new NSW authority including:

- No clear Terms of Reference
- No transparent operations including milestones and KPIs
- Limited statutory public consultation obligations
- Lack of cross-sectional representation including local government
- Discretionary rezoning, land acquisition powers and reselling restrictions
- No requirements for authority profits to be invested into public infrastructure and facilities
- No independent reporting to the Parliament or to the Auditor General.

The Sydney Metropolitan Development Authority assumes land planning controls without standard safeguards for community and local government consultation. At a governance level it appears to have no cross representation of other agencies or levels of government (neither Federal nor Local). At a planning level there is a complete

disconnect from the obligations of regional strategic plans and Local Environmental Plans. There have been similar contentious issues surrounding the operation and transparency of other development authorities such as the Barangaroo Development Authority. NSROC argues that an effective planning system must have consistency in governance principles and that State development authorities should not sit outside these requirements.

The review of the planning system must examine strategic planning entities to ensure development decision making by these bodies aligns within the planning system's general objectives and processes.

### **1.10 and 1.11 Zoning and Environmental Issues**

Zoning changes can be made to a specific property or to broader areas through planning instruments (LEPs). The capacity for zoning changes should be differentiated by scale, levels of irreversibility and its contiguous relationships to other land.

For example, protecting agricultural land on the city fringe is a key issue for our region. NSROC member councils of Hornsby and Ku-ring-gai are bounded by large tracts of protected bushland and agricultural or semi-rural land. Once a greenfield development fragments a large parcel of rural land it cannot be reformed back into rural land. For this reason rural lands should be protected as a resource for future local agriculture purposes. The metropolitan planning should include actions to preserve existing land for agricultural purposes on the metro fringe which may include limiting rezoning capacity.

Rezoning may also need to be limited where there are special areas of contiguous land. For example, the Councils adjoining Sydney Harbour, including those members of NSROC continue to meet to discuss regional planning issues affecting the Sydney and Middle Harbour. The SREP -Sydney Harbour Catchment was developed in close consultation with the Sydney Harbour Councils Group and provides an excellent example of a collaborative planning approach between Councils and the Department of Planning. It is proposed to repeal the SREP in order to reduce the number of State planning instruments. NSROC considers that the Sydney Harbour constitutes a discrete and distinctive region that warrants a special set of planning standards, zoning and guidelines to properly manage the various facets of the Harbour (working harbour, heritage, ecological sustainability, foreshores, public access and so on). In recognising special environmental areas like Sydney Harbour, zoning restrictions may be warranted to preserve the holistic focus of a region.

## **Chapter F – Implementation**

### **F1, F2, F8 The Role of the Department, Councils and Monitoring**

NSROC councils are concerned with the strategic capacity and resourcing of the Department of Planning. As noted previously the new "Transport for NSW" super agency fails to have Planning as a lead agency. A lead role in Cabinet by the Department of Planning is crucial for land planning and transport implementation to be successful.

The Department has been historically under-resourced, particularly in strategic planning capacity, reflecting a broader shortage in the professional planning workforce. At an operational level, NSROC Councils have experienced delays and errors in processing key instruments such as Local Environmental Plans. Processing delays by the Department compromise NSROC council's planning decisions and operations.

NSROC recommends that the Panel also consider recommendations relating to the structure of the Department of Planning to better determine the resources required, and to shift its current focus on assessment and approvals toward a stronger governmental strategic planning role and emphasizing the value of strategic planning to the NSW community and the economy. A further factor which must be recognised is the economic and community costs of unnecessary delays in the planning system. NSROC suggests that the Department's organisational performance assessment should include analysis of the opportunity costs of process delays.

### **General Comments on Issues Paper and Review Process**

NSROC supports the State Government's decision to review the NSW planning system and its key legislative instruments. However the approach to date of the Review and the construction of the Issues Paper is disappointing.

Of particular concern is the Issues Paper format with its accompanying 238 questions. This format is incredibly dense and difficult to navigate for both planning practitioners and the public. The response timeframes for such a detailed paper have been insufficient for NSROC and its member councils to deliberate and confirm their views formally.

A review of the planning regime must be put in context and the Panel's terms of reference proposed that the review examine interstate and international best practice frameworks. NSROC argued in November that if the Panel provided information about the operations of other planning systems that would assist public debate and prompt a higher quality of public feedback in consultation stages.

Unfortunately the Issues Paper makes virtually no references to "best practice" options but simply ask "yes/no" questions regarding a particular facet of planning activity. NSROC believes that responses in this limited context will not be meaningful and may often result in conflicting outcomes when answers on related topics are aggregated. A further concern is how responses to the Issues Paper will be analysed and weighted. It would have assisted if the Issues Paper had provided a summary analysis of public consultation comments which identified groupings of views or priorities given to issues.

For further discussion on the issues raised in this submission contact Carolynne James, Executive Director, NSROC [cjames@lanecove.nsw.gov.au](mailto:cjames@lanecove.nsw.gov.au) or 9911 3595.